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DEC 20 2007

In re Application of : **OFFICE OF PETITIONS**
Ringeisen :
Application No. 10/619,721 : DECISION ON PETITION
Filed: July 15, 2003 :
Docket No.: KN P 0065 :
:

This is a decision on the petition under 37 CFR 1.137(a), filed October 26, 2007, to revive the above-identified application. This matter is, *sua sponte*, treated under 37 CFR 1.181 as a petition withdraw the holding of abandonment.

The application was held abandoned for failure to timely submit a properly reply to the non-final Office action mailed April 18, 2007. The non-final Office action set a one month statutory period of time for reply. This decision precedes Notice of Abandonment.

Petitioner asserts non-receipt of the non-final Office action.

DECISION UNDER 37 CFR 1.181

In the absence of any irregularity in the mailing of an Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

The arguments and supporting documentation presented have been carefully considered. Moreover, petitioner has included a copy of a docket report covering the time period that a response would have been due had it been received. In view thereof, the evidence presented support the conclusion that the non-final Office action was not received.

In view thereof the Notice of Abandonment is hereby **VACATED** and the holding of abandonment is **WITHDRAWN**.

The application file is being forwarded to Technology Center 3700 further processing of the response to the non-final Office action submitted herewith.

DECISION UNDER 37 CFR 1.137(a)

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

In view of the above findings of fact, the petition under 37 CFR 1.137(a) is **DISMISSED AS MOOT**.

Petitioner may request a refund of the \$255.00 petition fee submitted herewith in view of the decisions set forth herein. Petitioner may request a refund of the petition fee by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

Telephone inquiries concerning this matter may be directed to the undersigned at 571-272-3205.


Alesia M. Brown
Petitions Attorney
Office of Petitions